IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 20TH JULY 2006 / 29TH ASHADHA,1928

C.E.Appeal.No. 13 of 2006()
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AGAINST THE ORDER DATED 02/03/2006 IN FINAL ORDER.505/2006 IN APPEAL.E/790/2000 of CUSTOMS,EXCISE&SERVICE TAX APP.TRIBUNAL,BANGALORE

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APPELLANT:
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N.P. KHALID,
PROPRIETOR, SOVEREIGN PLYWOOD, CHERUVANNOOR,
FAROKE, KOZHIKODE DISTRICT.

BY ADV. SRI.C.S.GOPALAKRISHNAN NAIR

RESPONDENTS:
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COMMISSIONER OF CENTRAL EXCISE,
CENTRAL REVENUE BUILDINGS, MANANCHIRA, CALICUT.

BY ASST. SOLICITOR GENERAL SRI.JOHN VARGHESE,

THIS CENTRAL EXICISE APPEAL HAVING COME UP FOR ADMISSION ON 20/07/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR &
K.M.JOSEPH, JJ.

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C.E. Appeal No. 13 OF 2006

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Dated this the 20th day of July, 2006

JUDGMENT

**Ramachandran Nair,J.**

This is an appeal filed under Section 35G of the Central Excise Act, 1944 against Annexure K order of the Central Excise Appellate Tribunal, dismissing the appeal for non-compliance of their order under Section 35F of the Act, directing pre-deposit of Rs. 5 lakhs as a condition for entertaining the appeal. In the first place, we find an appeal will not lie to the High Court against an order under Section 35F of the Act issued by the Tribunal conditionally dispensing with payment of duty and penalty for entertaining the appeal. It is seen that out of the contesting demand of around Rs. 15 lakhs towards duty and equal amount towards penalty, the Tribunal vide Annexure I order directed payment of only Rs. 5 lakhs. Even though appellant was directed to deposit Rs. 5 lakhs and report compliance by 2.3.2006, the appellant did not choose to contest the order. It is stated that another Petition was filed before the Tribunal probably for modifying

Annexure I order which was obviously not considered by the Tribunal and Tribunal proceeded to dismiss the appeal vide impugned order for non-compliance of order on pre-deposit. This is only an order refusing to entertain the appeal for non-compliance of Section 35F of the Act, which requires pre-deposit of duty or penalty for entertaining appeal, subject to orders to be issued by the Tribunal. Therefore appeal is not maintainable and the same is liable to be dismissed on that ground alone. It may still be possible for the appellant to challenge Annexure I order in this Court in writ proceedings. Therefore we have heard counsel for the appellant and Asst. Solicitor General, Sri. John Varghese, on merits on the challenge against Annexure I order. The contention of counsel for the appellant is that unit is closed and appellant is not in a position to deposit any amount. However, on going through Annexure I order, we find duty is demanded based on admission made by Managing Partner of the company that goods were sold under brand name which was denied by the appellant all through. However, a case was made out by the appellant that the Managing Partner has retracted from the statement given by him. It is seen that

the dealers have not retracted from their statements. Therefore we find no ground to interfere with Annexure I order of the Tribunal also. However, appellant is granted two weeks' time from the date of receipt of a copy of this judgment for deposit of Rs. 5 lakhs and for production of receipt before the Tribunal. If Rs. 5 lakhs is paid and receipt is produced as above, the Tribunal will restore the appeal and hear the petitioner on merits and dispose of the appeal at the earliest.

(C.N.RAMACHANDRAN NAIR)
Judge

(K.M.JOSEPH)
Judge